IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

SUMMONS FOR JUDGMENT NO. 957 OF 2004
IN
SUM. SUIT NO.1969 OF 2004

Thakkarsons Auto Ancillary (India) Ltd. — Plaintiffs
vs.
The New Model Industries Ltd. & anr. — Defendants

Mr.Sachin V. Masurkar for the plaintiffs.

Mr.V.R.Walavalkar i/b.M/s.K.V.Aiyer Associates for the defendant no.1.

Mr.G.A.Karmarkar i/b.Mr.G.S.Hegde for the defendant no.2.

CORAM : S.U. KAMDAR,J.

DATED : 24th October 2005

P.C.

The present suit is filed on the basis of goods sold and delivered under three invoices being Exhibits A-1, A-2 and A-3. It is the case of the defendant that the purchase order relied upon by the plaintiff being Exhibit A contains different description of the goods than what is mentioned in the invoices and, therefore, the said purchase order is bogus. It is further the case of the defendants that they have not received any goods and thus entitled to unconditional leave to defend the suit. I see no substance in either of the defences. The learned counsel for the plaintiff has produced invoices along with the consignment note and the lorry receipt which contains an acknowledgement of receipt of the goods by the defendants. The plaintiff has also

produced the letter dated 24th May 2002 addressed by the defendants interalia acknowledging the receipt of the goods along with the bill numbers and date and the amount and promised to pay. In that light of the matter, the contention raised by the defendant is without any merits.

2. The learned counsel for the plaintiff, however, contends that both the Exhibit A and the letter produced by the defendants being Exhibit B are fabricated and, thus, no amount is due and payable. I do not find any substance in the contention that the said both letters are fabricated. However, with a view to give opportunity to the defendants to defend the Suit, I direct the defendants to deposit a sum of Rs. 5 lacs in this Court within a period of four weeks from today failing which the plaintiff will be entitled to decree. The amount, if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court. Summons for judgement disposed of accordingly.

3. Suit transferred to the list of Commercial Causes. Written statement or points of defence to be filed within four weeks from the date of deposit. Affidavit, list of documents to be filed within four weeks

thereafter. Inspection and discovery within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.

(S.U. KAMDAR,J.)